



Department of Corrections and Rehabilitation

NOTICE OF CHANGE TO HEALTH CARE REGULATIONS

Sections: 3999.98, 3999.410



CALIFORNIA CORRECTION
HEALTH CARE SERVICE

Number:

24-02

Publication Date:

August 16, 2024

Effective Date:

To Be Announced

INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the proposed amendments to Sections 3999.98 and 3999.410, of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, to update provisions concerning the Tuberculosis Program.

IMPLEMENTATION: To Be Announced

PUBLIC COMMENT PERIOD

Any person may submit written comments about the proposed regulations to California Correctional Health Care Services, Health Care Regulations and Policy Section, P.O. Box 588500, Elk Grove, CA 95758, or by email to HealthCareRegulations@cdcr.ca.gov. All written comments must be received by the close of the public comment period, **September 30, at 5:00 p.m.**

PUBLIC HEARING INFORMATION

The California Department of Corrections and Rehabilitation will hold a virtual public hearing on September 30, 2024. Go to <https://cchcs.ca.gov/health-care-regs/> for the link to join the virtual hearing, or you may call (916) 701-9994 and enter phone conference ID 778 413 086# to join by phone (audio only) between the hours of 1:30 p.m. and 2:00 p.m. on September 4, 2024.

POSTING

This Notice shall be posted immediately upon receipt at locations accessible to incarcerated persons, supervised persons, and employees in each Department facility and field office not later than five calendar days after receipt. Also, facilities shall make this Notice available for review by incarcerated persons in segregated housing who do not have access to the posted copies and shall distribute it to incarcerated person law libraries and advisory councils. CDCR 621-HC (Rev. 07/20), Certification of Posting, shall be returned to the Health Care Regulations and Policy Section electronically. See Health Care Department Operations Manual, Section 5.1.1 for posting procedures.

CONTACT PERSON

Inquiries regarding this action may be directed to R. Hart, Associate Director, Risk Management Branch, California Correctional Health Care Services (CCHCS) at California Correctional Health Care Services, P.O. Box 588500, Elk Grove, CA 95758; by telephone at (916) 691-2921; or by email at HealthCareRegulations@cdcr.ca.gov. In the event the contact person is unavailable, inquiries should be directed to A. Burrell, Staff Services Manager II, Health Care Regulations and Policy Section, CCHCS, at (916) 691-2922.

JEFF MACOMBER
Secretary
California Department of Corrections and Rehabilitation

J. CLARK KELSO
Receiver

Attachments

NOTICE OF PROPOSED REGULATORY ACTION

California Code of Regulations
Title 15, Crime Prevention and Corrections
Department of Corrections and Rehabilitation

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code (GC) section 12838.5 and Penal Code (PC) section 5055, and the rulemaking authority granted by PC section 5058, proposes to amend sections 3999.98 and 3999.410 of the California Code of Regulations (CCR), Title 15, Division 3, concerning the tuberculosis (TB) program.

PUBLIC HEARING:

A virtual public hearing will be held on September 30, 2024. Go to <https://cchcs.ca.gov/health-care-regs/> for the link to join the virtual hearing, or you may call (916) 701-9994 and enter phone conference ID 778413086# to join by phone (audio only) between the hours of 1:30 p.m. and 2:00 p.m. on September 30, 2024.

PUBLIC COMMENT PERIOD:

The public comment period will close on **September 30, 2024 at 5:00 p.m.** Any person may submit public comments in writing (by mail or by email) regarding the proposed changes. To be considered, comments must be submitted to California Correctional Health Care Services (CCHCS), Health Care Regulations and Policy Section, P.O. Box 588500, Elk Grove, CA, 95758, or by email to HealthCareRegulations@cdcr.ca.gov before the close of the comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action to:

R. Hart
Associate Director
Risk Management Branch
California Correctional Health Care Services
P.O. Box 588500
Elk Grove, CA 95758
(916) 691-2922

A. Burrell
Staff Services Manager II
Health Care Regulations and Policy Section
California Correctional Health Care Services
(916) 691-2921

AUTHORITY AND REFERENCE:

GC section 12838.5 provides that commencing July 1, 2005, CDCR succeeds to, and is vested with, all the powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction of abolished predecessor entities, such as: Department of Corrections, Department of the Youth Authority, and Board of Corrections.

PC section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

PC section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC section 5054 provides that commencing July 1, 2005, the supervision, management, and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR.

PC section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

References cited pursuant to this regulatory action are as follows: Sections 121060, Health and Safety Code; Sections 5008.2, 5054, and 7570-7576, PC; and *Plata v. Newsom* (No. C01-1351 JST), U.S. District Court, Northern District of California.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

The CDCR and CCHCS propose to amend sections 3999.98 and 3999.410 of the CCR, Title 15, Division 3, Chapter 2, concerning the TB surveillance program. While current regulations outline the overall responsibilities, functions, and requirements of the program, existing regulations do not incorporate new procedures and requirements regarding TB screening process once a patient arrives at a reception center and where the screening results need to be documented.

This action will:

- Ensures staff properly screen and document patient TB symptoms upon arrival at a reception center.

BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS:

The Department anticipates that the proposed regulations will benefit the CDCR staff and patients by clarifying TB screening and testing process, providing CDCR patients comprehensive care while screening for patient TB symptoms and documenting properly. These proposed changes will also maintain patient health and safety and ensure patients receive timely access to comprehensive and effective TB screening and testing for better patient outcomes. In addition, the proposed regulations will have no effect on the State's environment, as the State's environment is not impacted by these operational changes and clarifications.

FORMS INCORPORATED BY REFERENCE:

- Not applicable

EVALUATION OF CONSISTENCY/COMPATIBILITY WITH EXISTING REGULATIONS:

Pursuant to GC section 11346.5(a)(3)(D), the Department must evaluate whether the proposed regulations are inconsistent or incompatible with existing State regulations. Pursuant to this evaluation, the Department has determined these proposed regulations are not inconsistent or incompatible with any existing regulations within CCR, Title 15, Division 3.

LOCAL MANDATES:

The proposed regulatory action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to GC section 17500 — 17630.

FISCAL IMPACT STATEMENT:

- Cost or savings to any State agency: *None*
- Cost to any local agency or school district that is required to be reimbursed: *None*
- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS:

The Department has made an initial determination that the proposed action will have no significant effect on housing costs because the proposed action relates strictly to the TB surveillance program which only affects staff and patients within CDCR.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:

The Department has determined that the proposed action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states because the proposed action relates strictly to the TB surveillance program which only affects staff and patients within CDCR.

RESULTS OF ECONOMIC IMPACT ASSESSMENT:

The proposed regulations will protect public health and safety, worker safety, and benefit CDCR staff and patients by ensuring health care staff follow standardized health care processes and guidelines for the TB surveillance program, and provide timely access to safe, efficient, and effective health care for CDCR patients.

The proposed regulations will have no effect on the State's environment as the State's environment is not impacted by these administrative and operational changes and clarifications to the TB surveillance program. In addition, the Department has determined that the proposed regulations will have no impact on the creation of new or the elimination of existing jobs or businesses within California or affect the expansion of businesses currently doing business in California because the proposed action relates strictly to the TB surveillance program which only affects staff and patients within CDCR.

BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS:

The Department anticipates that the proposed regulations will benefit the CDCR staff and patients by clarifying TB screening and testing process, providing CDCR patients comprehensive care while screening for patient TB symptoms and documenting properly. These proposed changes will also maintain patient health and safety and ensure patients receive timely access to comprehensive and effective TB screening and testing for better patient outcomes. In addition, the proposed regulations will have no effect on the State's environment, as the State's environment is not impacted by these operational changes and clarifications.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed action relates strictly to the TB surveillance program which only affects staff and patients within CDCR.

EFFECT ON SMALL BUSINESSES:

The Department has determined that the proposed regulations will have no significant adverse economic impact on small businesses because the proposed action relates strictly to the TB surveillance program which only affects staff and patients within CDCR.

CONSIDERATION OF ALTERNATIVES:

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

The Department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony, reasonable alternative, or other evidence provided that would alter the CDCR's initial determination to proceed with this action.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

The Department has prepared, and will make available, the proposed text and the Initial Statement of Reasons (ISOR) of the proposed regulatory action. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the contact person listed in this Notice. The proposed text, ISOR, and Notice of Proposed Action will also be made available on CCHCS's website <https://cchcs.ca.gov> and CDCR institution law libraries.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the contact person listed in this Notice.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 calendar days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person listed in this Notice. The Department will accept written comments on the modified regulations for 15 calendar days after the date on which they are made available.

TEXT OF PROPOSED REGULATIONS

In the following, ~~strikethrough~~ indicates deleted text and underline indicates added, amended, or moved text.

California Code of Regulations, Title 15, Division 3, Adult Institutions, Programs, and Parole

Chapter 2. Rules and Regulations of Health Care Services

Article 1. Health Care Definitions

Section 3999.98 is amended to incorporate in alphabetical order the following, and all other text within this section remains the same:

Section 3999.98. Definitions.

Interferon-Gamma Release Assays Test means the standard method used by the Department for the detection of ~~recent or past~~ Tuberculosis (TB) infection.

Tuberculosis Disease means a disease caused by ~~bacteria known as~~ Mycobacterium TB or other bacteria in the Mycobacterium TB complex. TB is a treatable infectious disease that usually affects the lungs and airway, but may also affect other parts of the body.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and *Plata v. Newsom* (No. C01-1351 JST), U.S. District Court, Northern District of California.

Subchapter 3. Health Care Operations

Article 11. Public Health

Section 3999.410 is amended to read:

3999.410. Disease and Virus Testing.

(a) The California Department of Corrections and Rehabilitation (CDCR) shall assess, screen, treat, and contain Tuberculosis (TB).

(1) Reception Centers (RC). Patients shall be immediately screened for TB symptoms upon arrival at the ~~Reception Center (RC)~~ as part of the ~~RC~~ screening process.

(A) Asymptomatic patients with a prior negative Interferon-Gamma Release Assays (IGRA) test, negative Tuberculin Skin Test (TST), or unknown or inadequate documentation of TB infection status shall have an IGRA test drawn at the RC within 72 hours unless there is documentation of a negative IGRA test or negative TST in the prior 30 calendar days.

1. Asymptomatic patients known to be HIV infected shall also receive a chest ~~Xx-r~~Ray within 72 hours of arrival unless their records contain documentation of a normal or stable chest ~~Xx-r~~Ray within the preceding 30 days. The chest ~~Xx-r~~Ray shall be read within 24 hours. Any HIV infected patient with a chest ~~Xx-r~~Ray abnormality that cannot be documented as stable for 60 or more days by previous records, shall be isolated and evaluated by a clinician even if asymptomatic.

(B) Patients with signs or symptoms of TB shall wear a surgical mask and be sent to the Triage and Treatment Area to be evaluated for active TB disease. The results of the TB symptom screening shall be documented in the health record.

(C) Patients with written documentation of a positive IGRA test or a positive TST, and no documentation of a complete course of treatment for latent tuberculosis infection, and no prior chest x-ray or the prior chest x-ray was taken more than six months before entry or re-entry into CDCR, shall, within 72 hours of arrival at an RC, have a chest x-ray and further workup as clinically indicated to rule out TB disease. ~~with a written record of a positive interpretation shall:~~

1. ~~Within 72 hours of arrival at an RC, have a chest X-Ray and further workup as clinically indicated to rule out TB disease.~~

2. ~~Have a repeat chest X-Ray, if the prior chest X-Ray was taken more than six months before entry or re-entry into CDCR.~~

(D) Patients with a history of prior TB disease shall:

1. ~~Be~~ be evaluated by a health care provider. ~~and should~~

2. ~~Have~~ have a baseline chest ~~Xx-r~~Ray.

(2) Patients arriving at a CDCR institution shall ~~immediately~~ receive symptom screening pursuant to subsection (a)(1) for TB disease as part of the transfer screening process. ~~This includes including patients who are:~~

~~(A) †~~Transferred between CDCR institutions;

~~(B) who †~~Returned from out-to-court;

~~(C) who †~~Returned from a higher level of care;

~~(D) or who are short stay~~ Laid over (enroute ~~or †~~layover ~~short stay~~) patients with no known recent exposure to an active TB patient.

(3) Annual and other periodic screening. Patients housed in a CDCR institution shall receive a TB evaluation annually. ~~In addition, a patient and may~~ receive periodic screenings based on the status of TB infection treatment.

(A) All patients shall be educated about TB infection and disease.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 5008.2, 5054 and 7570-7576, Penal Code; Section 121060, Health and Safety Code; and *Plata v. Newsom* (No. C01-1351 JST), U.S. District Court, Northern District of California.

INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend sections 3999.98 and 3999.410 of the California Code of Regulations (CCR), Title 15, Division 3, Chapter 2, regarding the tuberculosis (TB) surveillance program.

Summary of the Proposal

Problem Statement:

Title 15 regulations do not outline the current TB screening process once a patient arrives at a reception center and where the screening results need to be documented.

Objective:

This regulatory action ensures staff properly screen and document patient TB symptoms upon arrival at a reception center.

Benefit:

The proposed regulations will:

- Clarify existing TB screening and testing process.
- Provide CDCR patients comprehensive care while screening for patient TB symptoms and documenting properly.
- Ensure patients receive proper TB screening and testing for better patient outcomes.

ECONOMIC IMPACT ASSESSMENT

In accordance with Government Code (GC) section 11346.3(b), the Department has made the following assessments regarding the proposed regulation:

1. **Creation or Elimination of Jobs within the State of California**

The Department does not expect that the proposed regulations will have an impact on the creation of new or the elimination of existing jobs within the State of California. The proposed regulations relate strictly to the TB surveillance program, which only affects staff and patients within CDCR.

2. **Creation of New or Elimination of Existing Businesses within the State of California**

The Department does not expect that the proposed regulations will have an impact on the creation of new or the elimination of existing businesses within the State of California. The proposed regulations relate strictly to the TB surveillance program, which only affects staff and patients within CDCR.

3. Expansion of Businesses Currently Doing Business within the State of California

The Department does not expect that the proposed regulations will have an impact on the expansion of businesses currently doing business within the State of California. The proposed regulations relate strictly to the TB surveillance program, which only affects staff and patients within CDCR.

4. Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The proposed regulations will protect public health and safety, worker safety, and benefit CDCR staff and patients by ensuring health care staff follows standardized TB surveillance processes and guidelines, and provide timely access to safe, efficient, and effective TB screening and testing for CDCR patients. The proposed regulations will have no effect on the State's environment as the State's environment is not impacted by these administrative and operational changes and clarifications.

Statement of Determinations

Reasonable Alternatives

In accordance with GC section 11346.5(a)(13), the Department has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

Local Mandates

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to GC sections 17500 - 17630.

Significant Adverse Economic Impact

The Department has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because this regulatory action relates strictly to the TB surveillance program, which only affects staff and patients within CDCR.

Based on the economic impact assessment, the Department has determined that the regulations will not significantly affect the following:

1. The creation or elimination of jobs within the State of California.
2. The creation of new businesses or the elimination of existing businesses within the State of California.

3. The expansion of businesses currently doing business within the State of California.

The economic impact assessment shows that the proposed regulatory actions will benefit the health and welfare of California residents, worker safety, and/or the State's environment.

Reports, Studies and Documents Relied Upon

1. Not applicable

SPECIFIC PURPOSE AND RATIONALE FOR EACH REGULATION PROPOSED FOR AMENDMENT, ADOPTION, OR REPEAL

Non-substantive grammar and punctuation changes are made throughout the following regulatory sections for accuracy and readability.

Chapter 2. Rules and Regulations of Health Care Services

Article 1. Health Care Definitions

Section 3999.98. Definitions.

Section 3999.98 is amended to include a definition for the following terms:

The definition for "Interferon-Gamma Release Assays Test" is amended to remove the letter "s" in "Assays" and the terms "recent or past." This is necessary for clarity and to ensure a standard definition of the term "Interferon-Gamma Release Assay Test" for the purpose of Title 15, Division 3, Chapter 2, Rules and Regulations of Health Care Services. The definition for "Tuberculosis Disease" is amended to remove "bacteria known as" and add "or other bacteria in the Mycobacterium TB complex." This is necessary to ensure a standard definition of the term "Tuberculosis Disease" for the purpose of Title 15, Division 3, Chapter 2, Rules and Regulations of Health Care Services.

Subchapter 3. Health Care Operations

Article 1. Complete Care Model

Article 11. Public Health

Section 3999.410. Disease and Virus Testing.

Section 3999.410(a) is amended to spell out, "California Department of Corrections and Rehabilitation." This is necessary to clarify the meaning of the acronym "CDCR" within this section.

Section 3999.410(a)(1) is amended to fix the acronym for Reception Centers. This is necessary for readability.

Section 3999.410(a)(1)(A) is amended to remove the “s” from “Interferon Gamm Release Assays.” This is necessary for accuracy and consistency. Additionally, this section is amended to add the phrase “within 72 days unless there is documentation of a negative IGRA test or negative TST in the prior 30 calendar days.” This is necessary for clarity on the timeframe of administering the test and for cost savings by ensuring patients get tested only when needed.

Section 3999.410(a)(1)(A)(1) is amended to make the word "x-ray" lower case. This is necessary for grammatical accuracy.

Section 3999.410(a)(1)(B) is amended to specify that tuberculosis screenings need to be documented in the health record. This is necessary to ensure continuity of care by properly documenting the patient’s tuberculosis screening.

Section 3.999.410(a)(1)(C) is amended to combine previous sections 3999.410(a)(1)(C)(1)-3999.410(a)(1)(C)(2). This is necessary for readability and clarity regarding a positive IGRA test or positive TST.

Sections 3999.410(a)(1)(C)(1)-3999.410(a)(1)(C)(2) are repealed as these provisions are covered by section 3.999.410(a)(1)(C).

Section 3999.410(a)(1)(D) is amended to create subsections 3999.410(a)(1)(D)(1) through 3999.410(a)(1)(D)(2) for readability. Also, amended to make the word "x-ray" lower case. This is necessary for grammatical accuracy.

Section 3999.410(a)(2) is amended to remove the term “immediately.” This is necessary for clarity as the term is redundant. This section is also amended to replace “this includes” with “including” to create subsections 3999.410(a)(2)(A) through 3999.410(a)(2)(D) for readability.

New section 3999.410(a)(2)(D) is amended to provide for parallel structure and readability and replace the slash with "or" as the terms, "enroute" and "short stay" are not interchangeable.

Section 3999.410(a)(3) is amended to delete the phrase “. In addition, a patient” and delete the word “may”. Also add the word “and”. This is necessary for concision and clarity.